

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
BRUCE G. KIRKENDALL,

Appellant,

v.

SPOKANE COUNTY AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 79-170

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal from the issuance of a \$25 civil penalty, came before the Pollution Control Hearings Board, Chris Smith and David Akana (presiding), at an informal hearing on January 29, 1980, in Spokane.

Appellant appeared pro se; respondent was represented by its director, Fred O. Gray, and its inspector, Mabel Caine.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

FINDINGS OF FACT

I

Appellant Bruce Kinsella is the owner of the property located on or near District Drive & Spe and Co. The property is located to the north of the intersection of the street and the land area which is covered by the lease was not established.

II

On August 1, 1977, in response to a complaint of illegal use of the property, the police on a special visit to the property and on August 1, 1977, three police officers were on duty. The police officers observed the property and the property was found to be in violation of the lease and the property was found to be in violation of the lease and the property was found to be in violation of the lease.

For the following reasons, the police officers found the property in violation of the lease and the property was found to be in violation of the lease and the property was found to be in violation of the lease.

III

A violation of the lease was found to be in violation of the lease and the property was found to be in violation of the lease and the property was found to be in violation of the lease.

IV

Appellant owns two of the property and the property was found to be in violation of the lease and the property was found to be in violation of the lease and the property was found to be in violation of the lease.

1 his area, because the pick-up point is the length of his driveway
2 away, or about 400-500 feet from his home.

3 V

4 Respondent's inspector did not secure a warrant or permission to
5 come upon appellant's property on the day in question.

6 VI

7 Pursuant to RCW 43.21B.260, respondent has filed with this Board a
8 certified copy of its Regulation I which is noticed.

9 Section 6.01 makes it unlawful for any person to ignite, cause or
10 permit to be ignited, suffer, allow or maintain any open fire except
11 under certain conditions. One such condition allows burning of
12 natural vegetation under certain circumstances. Another condition
13 allows open fires containing household refuse where regular refuse
14 service is not available provided no garbage is burned and that no
15 dead animals are disposed of by burning.

16 Section 6.01B provides that it shall be prima facie evidence that
17 the person who owns or controls property on which an unlawful open
18 fire has occurred, has caused or allowed the open fire.

19 Section 2.02 gives respondent and its representatives power to
20 enter, at all reasonable times, upon any private or public property
21 for the purpose of investigating conditions specific to control,
22 recovery, or release of air contaminants into the atmosphere.

23 Section 2.11 provides for a civil penalty of up to \$250 per day
24 for each violation of Regulation I.

25 VII

26 Any Conclusion of Law which should be deemed a Finding of Fact is

1 hereby adopted as such.

2 For these findings, the Board orders as follows:

3 CONCLUSION OF LAW

4 I

5 Appellant's contention that respondent's inspection and audit failed
6 secured evidence upon his premises is not relevant to the
7 circumstances of this case.

8 II

9 The burden of proving that a violation of Regulation 1 occurred is
10 upon respondent. The evidence presented by respondent and
11 presumptions afforded its case was evenly met by the evidence of
12 appellant with respect to the issue of whether appellant "discovered or
13 maintained" an open fire. We conclude that respondent has proved its
14 on all the issues except that of "discovery or maintenance." The
15 element of a proper balance of the evidence and its weight, though
16 per se, could not be said.

17 III

18 The Board has found that respondent has failed to prove that
19 appellant violated Regulation 1.

20 The Board orders that the Board order as follows:

21 ORDER

22 The Board orders that the Board order as follows:

23 THE BOARD ORDERS THAT THE BOARD ORDER AS FOLLOWS:
24 THE BOARD ORDERS THAT THE BOARD ORDER AS FOLLOWS:
25 THE BOARD ORDERS THAT THE BOARD ORDER AS FOLLOWS:
26 THE BOARD ORDERS THAT THE BOARD ORDER AS FOLLOWS:
27 THE BOARD ORDERS THAT THE BOARD ORDER AS FOLLOWS:

1 DATED this 14th day of March, 1980.

2 POLLUTION CONTROL HEARINGS BOARD

3 Chris Smith

4 CHRIS SMITH, Member

5 David Akana

6 DAVID AKANA, Member